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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,969	09/29/2003	Michael T. Ansay	82829	3603

7590 04/02/2004

Office Of Counsel, Bldg 112T
Naval Undersea Warfare Center
Division, Newport
1176 Howell Street
Newport, RI 02841-1708

EXAMINER

RICHARDSON, JOHN A

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 04/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/672,969

Applicant(s)

ANSAY ET AL.

Examiner

John Richardson

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Non Final Rejection

1). The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2). Claims 1, 6, 7, 10, 11, 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Meeker (U.S. 3,217,599).

The reference discloses an underwater apparatus inherently capable of operating and performing in the manner claimed comprising a plurality of air bags (item 12), a canister arranged to hold a device (item 10), an air bag inflator (item 43) capable of launching the said canister, relating to claims 6, 10, the said canister comprises a device to be launched (see for example, Column 3, lines 50-58) and is complete with top and bottom enclosures as disclosed in Figure 1, relating to claim 7, the said air bags are supported at the top of the said canister enclosure (Figure 1), relating to claims 11, 13, the reference discloses the said air bag connected to said canister (see Figures 2, 3) with the means for inflating by air (Column 4, lines 26-61).

Art Unit: 3641

As to limitations which are considered to be inherent in a reference, note the case law In re Ludke, 169 USPQ 563, In re Swinehart, 169 USPQ 226, In re Fitzgerald, 205 USPQ 594, In re Best et al, 195 USPQ 430, and In re Brown, 173 USPQ 685,688.

It is noted that a claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from prior art apparatus" if the prior art teaches all the structural limitations of the claim. In re Masham, 2 USPQ2d 1647.

Claims directed to apparatus must be distinguished from prior art in terms of structure rather than functions. In re Danyl, 120 USPQ 528, 531.

Apparatus claims cover what a device *is*, not what a device *does*. Hewlett-Packard Co. v. Bausch & Lomb Inc., 15 USPQ2d 1525, 1528.

As set forth in MPEP§ 2115, a recitation in a claim to the material or article worked upon, does not serve to limit an apparatus claim.

3). Claims 1 to 4, 6 to 11,13 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown (U.S. 3,137,203).

The reference discloses an underwater missile launching apparatus comprising an air bag (item 17), a canister (item 13) arranged to hold a device (item 14), an air bag inflator system (items 18, 21) capable of launching the said canister, relating to claims 2-4, the said canister is arranged to be supported in a water tight container / submarine

launching tube with hatch (item 11, as shown in Figure 1), relating to claims 6, 10, the said canister comprises a device to be launched (item 14) and is complete with top and bottom enclosures as disclosed in Figure 1, relating to claim 7, the said air bags are supported at the top of the said canister enclosure (Figure 1), relating to claim 8, the said air bag inflator system (items 18, 21) are supported on the said container structure as shown in Figure 1, relating to claim 9, the said canister / container system is part of an underwater / submarine vessel, relating to claims 11, 13, the reference discloses the said air bag connected to said canister with the means for inflating by compressed gas / air (Column 3, lines 10-58).

4). Claims 1, 6, 7, 9 to 11,13 are rejected under 35 U.S.C. 102(b) as being anticipated by Obara (U.S. 6,252,822).

The reference discloses an underwater missile launching apparatus comprising an air bag (item 12), a canister (item 10) containing a countermeasure device, an air bag inflator system (items 16, 20) capable of launching the said canister, relating to claims 6, 10, the said canister comprises a device to be launched (Column 2, lines 53+) and is complete with top and bottom enclosures as disclosed in Figure 1, relating to claim 7, the said air bags are supported at the top of the said canister enclosure (Figure 1), relating to claim 9, the said canister / container system is part of an underwater / submarine vessel (Column 1, lines 21+), relating to claims 11, 13, the reference

Art Unit: 3641

discloses the said air bag connected to said canister with the means for inflating by compressed gas / air (Column 3, lines 54+).

5). Claims 1 to 11, 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Vass et al (U.S. 4,003,291)

The reference discloses an underwater missile launching apparatus comprising an air bag (item 30), a canister (item 19) arranged to hold a device (item 21), an air bag inflator system (items 34, 35) capable of launching the said canister, relating to claims 2-4, the said canister is arranged to be supported in a water tight container launching tube with hatch as shown in Figure 2, relating to claim 5, the reference discloses a tether system (items 40, 45, 46), between said container (item 11) and canister platform (item 16) relating to claims 6, 10, the said canister comprises a device to be launched (item 21) and the said container is complete with top and bottom enclosures as disclosed in Figure 2, relating to claim 7, the said air bags are supported at the top of the said canister enclosure (Figure 1), relating to claim 8, the said air bag inflator system (items 34, 35) are supported in the said container structure as shown in Figure 2, relating to claim 9, the said canister / container system is part of an underwater structure, relating to claims 11, 13, the reference discloses the said air bag connected to said canister with the means for inflating by compressed gas / air (Column 3, lines 10).

6). Claims 1, 11, 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Murray et al (U.S. 4,919,065).

The reference discloses an underwater launching apparatus that is inherently capable of operating and performing in the manner cited in the claims, comprising a central tube (item 7) inflatable by means of a pyrotechnic / gas generator device (item 15) connected to an inflatable air bag (Column 3, lines 5-14), a canister (item 1) containing a device, and relating to claim 11, the said canister is connected through intermediate structures to said central tube / air bag system as shown in Figure 1, and relating to claim 12, the reference discloses a gas generator system for inflating said air bag (item 15).

7). The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

8). Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Richardson whose telephone number is (703) 305 0764. The examiner can normally be reached on Monday to Thursday from 7.00 AM to 4.30 PM. The examiner can also be reached on alternate Fridays.

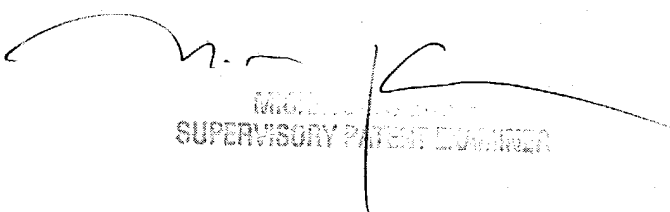
Art Unit: 3641

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone, can be reached on (703) 306 4198. The fax phone number for the organization where this application or proceeding is assigned is (703) 305 7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308 1113.

John Richardson, PE,

March 30 2004.


SUPERVISORY PATENT ENGINEER